

Attorney Docket No. 030065
Application No. 10/802,285
Amendment dated November 16, 2007
Reply to Office Action of January 16, 2008

REMARKS

Claims 1-21 and 31-42 are currently pending. No new matter has been entered.

Formal Matters

Claims 1-3, 13-15 and 31-35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan (U.S. Patent Pub. No. 2004/10096111) in view of Frishman (U.S. Patent Pub. No. 2003/0044080). Claim 36 is rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan and Frishman in view of Tan (U.S. Patent No. 6,188,799) and Varma (U.S. Patent Pub. No. 2003/0235250). Claim 40 is rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan '111 and Frishman in view of Thyagarajan. Claims 41-42 are rejected under 35 U.S.C. §103(a) as being unpatentable over Thyagarajan and Frishman in view of Tan.

Claims 4-12, 16-21 and 37 are indicated as being allowable if rewritten to include the limitations of their base claim and any intervening claims.

In response to the argument discussed below, Applicant believes that all claim rejections are traversed.

Disqualification of Thyagarajan as prior art under 35 U.S.C. §103(c)

Claims 1-3, 13-15 and 31-35 are all currently rejected under 35 U.S.C. §103(a) as being unpatentable over the reference of Thyagarajan in combination with one or more other references as noted above.

35 U.S.C. §103(c) states that “subject matter developed by another person, which qualifies as prior art only under one of more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed

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invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person”.

The present application has a priority date of **17 March 2003**, prior to the publication date of the Thyagarajan reference (20 May 2004). Thus, the Thyagarajan reference cannot quality as prior art under 35 U.S.C. §102(a) or (b). Additionally, it is obvious from the face of the reference that it is not a 35 U.S.C. §102(c) or (d) reference. Thus, it may only be a reference under one or more of subsections (e), (f) and (g).

Applicant also notes that the Thyagarajan reference and the present application were, at the time the invention covered by the present application was made, owned by the same person or subject to an obligation of assignment to the same person, that person being Qualcomm, Inc. Both the Thyagarajan reference and the present application have been so assigned and the present application was subject to such an assignment at the time of the invention. Thus, according to 35 U.S.C. §103(c) (and MPEP 706.02(l)(2)), the Thyagarajan reference can not be used to preclude the patentability of the present application and is an improper reference. Withdrawal of the rejection of the remaining claims is respectfully requested.

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Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Applicant believes that no additional fees are required. Nevertheless, should the Commissioner determine that additional fees are required, the Commissioner is hereby authorized to charge any required fees, or credit any overpayment, to Deposit Account 17-0026 in the name of Qualcomm, Inc.

Respectfully submitted,

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